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7 **United States District Court**  
8 **Central District of California**  
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10 BONVIVINO CAPITAL LLC,

11 Plaintiff,

12 v.

13 MORGAN CLENDENEN; COLD  
14 HEAVEN CELLARS LLC; DOES 1-50,  
15 inclusive,

16 Defendants.

17 COLD HEAVEN CELLARS LLC;

18 MORGAN CLENDENEN,

19 Counterclaimants,

20 v.

21 SCOTT MANLIN; ROGER MANLIN;  
22 BONVIVINO CAPITAL LLC,

23 Counterdefendants.

Case № 2:12-cv-08185-ODW(FFMx)

**ORDER TO SHOW CAUSE RE.  
FAILURE TO COMPLY WITH  
COURT ORDER**

24 On July 14, 2014, the Court held a status conference in the related case of *Cold*  
25 *Heaven Cellars LLC v. Manlin*, No. 2:14-cv-01050-ODW(FFMx) (C.D. Cal. case  
26 filed Feb. 11, 2014). The Court found that the claims brought by Cold Heaven Cellars  
27 LLC and Morgan Clendenen in that action were really compulsory counterclaims that  
28 they should have brought in this action, which is the original case between the parties.

1 The Court therefore granted Cold Heaven and Clendenen leave to amend their answer  
2 in this action to add those compulsory counterclaims.

3 On August 8, 2014, Cold Heaven and Clendenen filed an Amended Answer in  
4 this action. (ECF No. 118.) As instructed, they also filed their claims from the later  
5 action as counterclaims. But in addition to bringing counterclaims against Bonvivino  
6 Capital LLC and Roger Manlin—the defendants in the second-filed action—Cold  
7 Heaven and Clendenen also filed a counterclaim against Roger Manlin.

8 Cold Heaven and Clendenen had never named Roger Manlin as a defendant in  
9 the later action, and thus the Court did not grant them leave to amend their answer in  
10 this case to bring counterclaims against him. The whole point of requiring Cold  
11 Heaven and Clendenen to bring the claims in the second-filed action as compulsory  
12 counterclaims in this case was to streamline the litigation between the parties instead  
13 of engaging in a piecemeal approach. Adding new counterdefendants at this point—  
14 especially without Court approval—throws a wrench into the judicial machinery. This  
15 is especially apparent in light of the September 2, 2014 Ex Parte Application for  
16 Protective Order filed by Bonvivino and Scott and Roger Manlin. (ECF No. 122.)

17 The Court therefore **ORDERS** Cold Heaven and Clendenen to **SHOW CAUSE**  
18 in writing by **Friday, September 5, 2014**, why they filed counterclaims against Roger  
19 Manlin without Court approval. No hearing will be held; Counterclaimants shall  
20 respond in writing. The Court will discharge this Order upon the filing of a notice of  
21 voluntary dismissal without prejudice as to the Roger Manlin counterclaims. Failure  
22 to timely respond will result in dismissal of the counterclaims and such other  
23 sanctions as the Court deems just and proper.

24 **IT IS SO ORDERED.**

25 September 3, 2014

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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**